IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7527 OF 2006

Ajay Ashok Bhore ...Petitioner

vs.

Sanjay Jaywantrao Avale and ors. ...Respondents

Mr.R.S.Apte with Mr.Amit Borkar for the Petitioner
Mr.M.L.Patil i/b M/s.Zohair & Co. for Respondent No.1
Mr.Tejpal Ingale for Respondent No.6.

CORAM: A.S.OKA,J.
DATE : FEBRUARY 8,2007.

P.C.:

1. Heard learned Counsel for the parties. The Petitioner preferred an Appeal under rule 15 (10) of the Maharashtra Municipalities Election Rules,1966 (hereinafter referred to as the said Rules of 1966) for challenging the order passed by the Returning Officer by which his nomination paper for election of the Municipal Council was rejected. The said Appeal has been dismissed by order dated 7th November 2006. The election was held thereafter and the result of the election was declared on 20th November 2006. It is not in dispute that the petitioner has challenged the result of the election by invoking section 21 of the Maharashtra Municipal Councils, Nagar Panchyats and Industrial Townships Act,1965 (hereinafter referred to as the said Act of 1965) and the election Petition No. 8 of 2006 filed by him is pending. The challenge in this Petition under Article 227 of Constitution is to the aforesaid Judgment and order dated 7th November 2006

by which the Appeal preferred by the Petitioner under Rule 15 of the said Rules of 1966 was rejected.

2. The learned Counsel for the Petitioner submitted that the Appeal has been disposed of by the learned District Judge in a most unsatisfactory manner and the Judgment is perverse. He submitted that in view of sub rule 10 of Rule 15 of the said Rules, now it will not be open for the Petitioner to challenge the order passed by the Returning Officer of rejection of his nomination paper in the Election Petition filed by him under section 21 of the said Act of 1965.

3. It must be stated here that after the Appeal under Rule 15(1) was rejected election was held and as stated above the Petitioner has filed an election petition for challenging the result of the election. One of the grounds of challenge is improper rejection of nomination paper. The question is where in view of rejection of his Appeal under rule 15, whether this ground can be agitated in the election petition.

4. My attention has been invited to the decision of a Full Bench of this Court in case of Dattatraya Narhar Pitale Vs. Vibhakar Dinkar Gokhale and another (1975 Mh.L.J. page 701). The Full Bench has considered the effect of rule 15(10) of the said Rules of 1966. Paragraph 15 of the said decision reads thus :

"15. **Under section 21 of the Act the validity of election, co-option or nomination can be challenged either by a candidate at the election or by any person entitled to vote at the election. The grounds on which the validity of such election can be challenged are not different to a candidate on the one hand and to a person entitled to vote at the election on the other.** The language of section 21 being uniform, the grounds of challenge to the validity of an election will be the same, either it is at the instance of a voter or at the instance of a candidate. If in view of the provisions of rule 15(10) the right of a voter to challenge the validity of an election on the ground of disqualification of a candidate is taken away, it will result in substantially taking away the right of a voter to challenge the validity of election of a returned candidate on such grounds as are permissible to him in law. The fact that a candidate is not disqualified is one of the necessary qualifications before he can file his nomination paper. Now, a voter can, in an election petition to set aside the election of a returned candidate, take various grounds including the ground of disqualification. He may either urge that the candidate whose nomination paper was filed was wrongfully accepted, because in either of the two

cases the result of election will be materially affected if the decision of the Returning Officer or the District Judge in appeal therefrom is treated as erroneous. When the nomination paper of a candidate has been wrongfully rejected, then, it will a pure surmise to think how many votes he could have secured if he was in the field at the time when the poll took place; so also, when the nomination paper of any defeated candidate has been wrongfully accepted, another defeated candidate or a voter can equally contend that the nomination of paper of such defeated candidate was wrongfully accepted and if he was not in the field, then, even the defeated candidate would have secured the votes which were cast in favour of the other defeated candidate. This will be a ground on which the validity of an election of a returned candidate can be challenged having regard to the scope and ambit of section 21 and the decision arrived at as the result of summary inquiry cannot be so treated as to deprive a voter or a candidate to have a proper and fuller inquiry at the trial of an election petition. **Thus, in our opinion, it is not possible to take the view that on proper construction of rule 15 (10) read with section 17 of the Act it is not permissible either to a candidate or to an elector to challenge the validity of an election of a returned candidate on**

the ground that he was disqualified under the provisions of section 16(1) of the Act."

(Emphasis supplied)

In paragraph 12 of its decision, the Full Bench has observed thus :

"12...**In our opinion, rule 15(10) cannot be given such overriding effect as to take away completely the right of an elector or a voter to challenge the validity of an election, inter alia, on the ground of wrongful acceptance or rejection of the nomination paper of a candidate**..."

(Emphasis supplied)

4. In view of the decision of the Full Bench, now the Petitioner can agitate all issues in the pending Election Petition filed under section 21 of the said Act of 1965 including the issue regarding wrongful rejection of his nomination paper.

5. In view of pendency of the said Election Petition, it is not necessary to entertain this Petition. Subject to the observations made above, Petition is rejected. Pending Election Petition will be decided expeditiously.

6. All contentions of the parties in the pending Election

Petition are expressly kept open.

JUDGE